

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

RAMON VILLANUEVA-BAZALDUA	)	
individually and on behalf of other	)	
similarly situated,	)	Civil Action No. 06-185
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
TRUGREEN LIMITED PARTNERS <sup>1</sup>	)	
and TRUGREEN, INC. <sup>2</sup> d/b/a	)	
TRUGREEN CHEMLAWN, <sup>3</sup>	)	
	)	
Defendants.	)	

**ANSWER AND AFFIRMATIVE DEFENSES**

Defendants TruGreen Limited Partnership, d/b/a TruGreen Chemlawn, as well Defendant TruGreen, Inc. (hereinafter referred to collectively as “TruGreen”) answer the Complaint filed in the above-captioned action by Plaintiff Ramon Villanueva-Bazaldua (“Plaintiff”). Each paragraph in this Answer responds to the corresponding paragraph in the Complaint.

1. TruGreen admits that Plaintiff has brought this action pursuant to the Fair Labor Standards Act (“FLSA”), that Plaintiff asserts the common law causes of action set forth in Paragraph 1, and that Plaintiff seeks to pursue claims on behalf of other individuals. TruGreen denies the remainder of this Paragraph and specifically denies that Plaintiff and any other individuals presently or formerly employed by TruGreen Limited Partnership are or were similarly situated, and specifically denies that this matter is appropriate for class or collective treatment.

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<sup>1</sup> The correct legal name is TruGreen Limited Partnership.

<sup>2</sup> TruGreen, Inc. was not Plaintiff’s employer, and therefore, is not a proper party in this action.

<sup>3</sup> TruGreen, Inc. does not do business as (d/b/a) TruGreen Chemlawn; TruGreen Limited Partnership does do business as (d/b/a) TruGreen Chemlawn.

2. The allegations in Paragraph 2 constitute legal conclusions to which no responsive pleading is required.

3. The allegations in Paragraph 3 constitute legal conclusions to which no responsive pleading is required.

4. The allegations in Paragraph 4 constitute legal conclusions to which no responsive pleading is required.

5. The allegations in Paragraph 5 constitute legal conclusions to which no responsive pleading is required. To the extent the Court requires a response, TruGreen admits that Plaintiff worked within the district in 2004 and that TruGreen conducts business within the district; the remaining allegations are denied.

6. TruGreen admits that business records indicate that Plaintiff's last known residence was in the Republic of Mexico. TruGreen denies the remaining allegations in Paragraph 6.

7. Denied as stated. The correct legal name is TruGreen Limited Partnership.

8. Denied as stated. The correct legal name is TruGreen Limited Partnership.

9. TruGreen admits that Plaintiff seeks to pursue FLSA claims on behalf of other individuals. TruGreen denies the remainder of this Paragraph and specifically denies that Plaintiff and any other individuals present or formerly employed by TruGreen Limited Partnership are or were similarly situated for the purposes of the claims asserted in the Complaint.

10. TruGreen admits that Plaintiff seeks to pursue claims on behalf of other individuals. TruGreen denies the remainder of this Paragraph and specifically denies that this action is appropriate for class or collective treatment.

11. TruGreen admits that TruGreen Limited Partnership provides lawn and landscaping care services to customers in, among other places, Delaware, Pennsylvania, and New Jersey. The remaining allegations in Paragraph 11 constitute legal conclusions to which no responsive pleading is required.

12. TruGreen admits that since at least 2003, TruGreen Limited Partnership has submitted petitions to the Bureau of Citizenship and Immigration Services to employ non-immigrant temporary non-agricultural workers on a lawful and temporary basis pursuant to the federal government's H-2B visa program. TruGreen denies the remaining allegations in Paragraph 12.

13. TruGreen admits that since at least 2003, TruGreen Limited Partnership submitted Form ETA 750 and Form I-129 petitions for non-immigrant workers to the Bureau of Citizenship and Immigration Services to employ non-immigrant temporary non-agricultural workers on a lawful and temporary basis. TruGreen denies the remaining allegations in Paragraph 13.

14. TruGreen admits that TruGreen Limited Partnership filed forms ETA 750 and I-129 on Plaintiff's behalf for employment for the period March 1, 2004, through November 30, 2004; the contents of those documents speak for themselves. To the extent that TruGreen Limited Partnership filed forms ETA 750 and I-129 for other individuals, the contents of those documents similarly speak for themselves.

15. TruGreen admits that TruGreen Limited Partnership[ filed ETA 750 and forms I-129 in 2003, 2005 and 2006 pursuant to the H-2B Visa program; the contents of those documents speak for themselves.

16. TruGreen admits that TruGreen Limited Partnership lawfully petitioned for the employment of foreign nationals from Mexico as temporary non-immigrant non-agricultural workers; the remaining allegations are denied.

17. TruGreen admits that TruGreen Limited Partnership utilized the services of LLS International for the purpose of recruiting and moving Plaintiff into the United States as an H-2B temporary non-immigrant non-agricultural worker; the remaining allegations are denied.

18. TruGreen lacks knowledge or information sufficient to form a belief as to the truth of the allegations relating to what unidentified Mexican H-2B workers were "promised in Mexico" by unidentified individuals. TruGreen denies the remaining allegations in Paragraph 18.

19. TruGreen lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 19 and, therefore, those allegations are denied.

20. TruGreen lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 20 and, therefore, those allegations are denied.

21. TruGreen lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 21 regarding Plaintiff's return transportation to Mexico and, therefore, those allegations are denied. TruGreen further lacks knowledge or information sufficient to form a belief as to the allegations in Paragraph 21 regarding each individual foreign national employed as an H-2B worker and, therefore, those allegations are denied.

22. Denied.

23. Denied.

24. Denied.

25. Denied.

26. Denied.

27. Denied.

28. Denied.

29. TruGreen admits that Plaintiff was paid a salary of \$450 per week and that his regular and overtime rates of pay were calculated according to a fluctuating workweek in accordance with the FLSA and all applicable regulations. The remaining allegations in Paragraph 29 are denied.<sup>4</sup>

30. TruGreen admits that TruGreen Limited Partnership employs and has employed foreign nationals as temporary non-immigrant non-agricultural workers and calculates and has calculated the regular and overtime rates of pay in accordance with the FLSA and all applicable regulations. The remaining allegations in Paragraph 30 are denied.

31. Denied.

32. Denied.

33. Denied.

34. Denied.

35. Denied.

36. Denied.

TruGreen denies all allegations in Plaintiff's Prayer for Relief (including all subparts) denies that it is liable to Plaintiff for any reason or in any way, denies that Plaintiff and any current or former employee of TruGreen are or were similarly situated, denies that this action is appropriate for class or collective treatment, and denies all allegations not specifically admitted above.

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<sup>4</sup> TruGreen takes issue with Plaintiff's reference to "Chinese overtime," as the term denigrates those of Chinese origin.

**FIRST DEFENSE**

Plaintiff was at all times compensated in accordance with the FLSA and all applicable regulations.

**SECOND DEFENSE**

Plaintiff is not similarly situated with other current or former employees of TruGreen Limited Partnership who were or are employed pursuant to an H-2B visa and, therefore, is not entitled to proceed with this case as a class or collective action under 29 U.S.C. § 216(b) of the FLSA or Rule 23 of the Federal Rules of Civil Procedure.

**THIRD DEFENSE**

TruGreen at all times acted in good faith and had reasonable grounds for believing that its alleged acts and omissions were not a violation of the law, including the FLSA, and, therefore, no liquidated damages can be awarded because its actions or omissions were not a willful violation of the FLSA or any other law.

**FOURTH DEFENSE**

Plaintiff was, at all times, an at-will employee and did not have a contract of employment with TruGreen.

**FIFTH DEFENSE**

Plaintiff's reliance on any purported promise was unreasonable.

**SIXTH DEFENSE**

TruGreen, Inc. is not a proper party to this action.

WHEREFORE, Defendants TruGreen Limited Partnership d/b/a TruGreen Chemlawn, as well as Defendant TruGreen, Inc., respectfully request that this Court strike the class and

collective action allegations from Plaintiff's Complaint, dismiss Plaintiff's claims with prejudice, enter judgment in Defendants' favor on all claims asserted by Plaintiff, and award Defendants attorneys' fees and costs and such other relief as the Court deems just and proper.

Respectfully submitted,

/s/ Michael P. Kelly  
Michael P. Kelly (DE Bar ID No. 2295)  
McCarter & English  
Citizens Bank Building  
919 N. Market Street, 18th Floor  
Wilmington, DE 19801  
(302) 984-6301

*Pro Hac Application in process for:*  
Michael L. Banks (Pa. I.D. #35052)  
Sarah E. Bouchard (Pa. I.D. #77088)  
1701 Market Street  
Philadelphia, PA 19103-2921  
(215) 963-5387/5077

OF COUNSEL:  
MORGAN, LEWIS & BOCKIUS LLP

Dated: April 19, 2006

Attorneys for Defendants

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

Ramon Villanueva-Bazaldua

(b) County of Residence of First Listed Plaintiff

(EXCEPT IN U.S. PLAINTIFF CASES)

Mexico

(c) Attorney's (Firm Name, Address, and Telephone Number)

Rappaport, Castro & Gonzalez  
916 N. University, Suite 2, Wilmington DE 19805

## DEFENDANTS

TruGreen Limited Partners, et al.

New Castle

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

McCarter + English, LLP  
919 N Market St., 18th Fl., Wilmington, DE 19801

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

<input type="checkbox"/> 1 U.S. Government Plaintiff	<input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<b>PERSONAL INJURY</b>	<b>PERSONAL INJURY</b>	<input type="checkbox"/> 420 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<b>PROPERTY RIGHTS</b>	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage		<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability		<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 390 Other Personal Injury		<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury			<input type="checkbox"/> 850 Securities/Commodities/ Exchange
<input type="checkbox"/> 195 Contract Product Liability				<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise				<input type="checkbox"/> 890 Other Statutory Actions
<b>REAL PROPERTY</b>	<b>CIVIL RIGHTS</b>	<b>PRISONER PETITIONS</b>	<b>SOCIAL SECURITY</b>	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<b>Habeas Corpus:</b>	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 530 General	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 550 Civil Rights		<input type="checkbox"/> 950 Constitutionality of State Statutes
	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 555 Prison Condition		

## V. ORIGIN

(Place an "X" in One Box Only)

 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation 7 Appeal to District Judge from Magistrate Judgment

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

## VI. CAUSE OF ACTION

Brief description of cause:

TSA 'breach of contract' fraud; violation of covenant of good faith &amp; fair dealing

## VII. REQUESTED IN COMPLAINT:

 CHECK IF THIS IS A CLASS ACTION  
UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:  
JURY DEMAND:  Yes  No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

4/19/06

SIGNATURE OF ATTORNEY OF RECORD

Paul A. Brando

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

## Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

**I. (a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

**II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

**III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

**IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

**V. Origin.** Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

**VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service

**VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

**VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

RAMON VILLANUEVA-BAZALDUA )  
individually and on behalf of other )  
similarly situated, ) Civil Action No. 06-185  
)  
Plaintiff, )  
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v. )  
)  
TRUGREEN LIMITED PARTNERS<sup>1</sup> )  
and TRUGREEN, INC.<sup>2</sup> d/b/a )  
TRUGREEN CHEMLAWN,<sup>3</sup> )  
)  
Defendants. )

**CERTIFICATE OF SERVICE**

Michael P. Kelly hereby certifies that on this 19<sup>th</sup> day of April, 2006, a copy of the Defendants' Answer and Affirmative Defenses was served electronically on the following:

Vivian L. Rapposelli  
916 North Union Street, Suite 2  
Wilmington, DE 19805

/s/ Michael P. Kelly  
Michael P. Kelly (DE Bar ID 2295)  
McCarter & English, LLP  
919 N. Market Street, 18<sup>th</sup> Floor  
Wilmington, DE 19801  
(302) 984-6301

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